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EXAMINER

GRAHAM, GARY K

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/674,447
Filing Date: December 26, 2000
Appellant(s): KOTLARSKI ET AL.

MAILED
JUN 15 2007
GROUP 1700

Michael J. Striker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05 February 2007 appealing from the Office action mailed 19 April 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. Claims 16 and 17 are not objected to in light of entry of the 19 August 2005 after final amendment. A correct statement of the status of the claims is as follows:

This appeal involves claims 2-6, 8-13, 16 and 17.

Claims 1, 7 and 14-15 have been canceled.

Claims 18 and 19 are allowed.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect. Appellant lists the response filed 19 August 2005 as a "Request for Reconsideration". However, such is in actuality an "Amendment after Final".

The amendment after final rejection filed on 19 August 2005 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims appears on pages 12-16 of the Appendix to the appellant's brief. The minor errors are as follows: The listed cancelled claims 1, 7, 14-15 are not on appeal.

(8) Evidence Relied Upon

DE 19627115	MERKEL ET AL	1-1998
US 3,659,310	ROSEN	5-1972
US 3,386,123	OISHEI ET AL	6-1968
US 5,713,100	SAMARTGIS	2-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 2-6, 8, 9, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merkel et al (German patent 19627115) in view of Rosen (US patent 3,659,310).

The patent to Merkel discloses the invention substantially as is claimed, including a wiper blade (10) having wiping strip (14) with longitudinal grooves into which separate carrying rails (42) engage. The rails engage a longitudinal web defined between the two grooves. A connection device formed as a holder (66), for attaching to a wiper arm (18), engages the rails on both upper and lower surfaces thereof intermediate the ends of the blade (fig.2). Said holder has first and second L-legs engaging a respective rail.

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The patent to Merkel discloses all of the above recited subject matter with the exception of the holder pressing on the rails, by virtue of the rails and web being wider than the distance between the L-legs, to compress the longitudinal web, and the holder being made of plastics or metal.

The patent to Rosen discloses compression of the web (19) by rails (17) to secure the wiper strip (12) to the rails and thus holder (14). Rosen also sets forth that compression of the web can be repeated selectively along the length of the blade at intervals as desired to enable control of blade resiliency (col. 2, lines 62+).

It would have been obvious to one of skill in the art to have the holder of Merkel grip the rails such that they compress the longitudinal web, as clearly suggested by Rosen, to provide a more secure connection between the holder and the blade and control the resiliency of the blade. Such compression would mean that the widths are as claimed.

With respect to claims 8 and 9, while Merkel is silent as to the particular material of the holder, the selection of a particular material would be an entirely obvious choice. The particular material employed would be more a choice of the manufacturer based more on the availability of such materials than on any inventive step. Further, use of both plastics and metal is notoriously well known in the automotive field. It would have been obvious to one of skill in the art to employ any material so desired for the holder, including plastic as is claimed to provide a lightweight and inexpensive holder or metal as claimed to provide a high strength and durable holder, lacking any criticality of such material.

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Claims 2-6, 8-11, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merkel et al (German patent 19627115) in view of Oishei et al (US patent 3,386,123).

The patent to Merkel discloses the invention substantially as is claimed, including a wiper blade (10) having wiping strip (14) with longitudinal grooves into which separate carrying rails (42) engage. The rails engage a longitudinal web defined between the two grooves. A connection device formed as a holder (66), for attaching to a wiper arm (18), engages the rails on both upper and lower surfaces thereof intermediate the ends of the blade (fig.2). Said holder has first and second L-legs engaging a respective rail.

The patent to Merkel discloses all of the above recited subject matter with the exception of the holder pressing on the rails, by virtue of the rails and web being wider than the distance between the L-legs, to compressing the longitudinal web, and the holder being made of plastics or metal.

The patent to Oishei discloses compression of the web (40) by rails (31) to secure the wiper strip (29) to the rails and thus holder (10). Oishei also teaches providing projections (35) on the rails.

It would have been obvious to one of skill in the art to have the holder of Merkel grip the rails such that they compress the longitudinal web, as clearly suggested by Oishei, to provide a more secure connection between the holder and the blade. Such compression would mean that the widths are as claimed. The rails of Merkel could also be provided with projections, as clearly suggested by Oishei, to improve gripping of the web by the rails.

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With respect to claims 8 and 9, while Merkel is silent as to the particular material of the holder, the selection of a particular material would be an entirely obvious choice. The particular material employed would be more a choice of the manufacturer based more on the availability of such materials than on any inventive step. Further, use of both plastics and metal is notoriously well known in the automotive field. It would have been obvious to one of skill in the art to employ any material so desired for the holder, including plastic as is claimed to provide a lightweight and inexpensive holder or metal as claimed to provide a high strength and durable holder, lacking any criticality of such material.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merkel et al (German patent 19627115) in view of Oishei et al (US patent 3,386,123) as applied to claims 1 and 10 above, and further in view of Samartgis (US patent 5,713,100).

The patents to Merkel and Oishei disclose all of the above recited subject matter with the exception of the projections being offset wherein one is located opposite a recess in the other rail.

The patent to Samartgis discloses providing the rails (13) with offset projections (12a, 12b). The offset projections align the projection (12b) with a recess formed between the two projections (12a).

It would have been obvious to one of skill in the art to offset the projections provided in the modified Merkel wiper blade, as clearly suggested by Samartgis, to increase the security of the connection between the rails and the wiper strip.

(10) Response to Argument

Appellant's argument with respect to the Merkel/Rosen rejection are noted but not persuasive. Appellant argues that while the end clamps (50) of Merkel are disclosed as compressing the body (22) via the supporting element (12), there is no disclosure that the intermediate clamps (60), which attach the holder (66) to the spring rails (42), also hold the wiper strip by compression. The examiner agrees that Merkel does not explicitly discuss the clamps (60) of the holder (66) compressing the support element. Although, it should be noted that in all likelihood, such compression does occur in Merkel. Otherwise, the holder (66) would not be held in place on the support element, as it would slide right off. In any event, as set forth above, Rosen discloses compression of the web (19) by rails (17) of the support element via claws (13) to secure the wiper strip (12) to the rails and thus **holder** (14). The holder (14) of Rosen is a comparable structure to the holder (66) of Merkel, which has claws at opposite ends thereof and is for coupling the blade to wiper arms. Rosen also sets forth that compression of the web can be repeated selectively along the length of the blade at intervals as desired to enable control of blade resiliency (col. 2, lines 62+). Thus, Rosen does contemplate compression of the web at not only the ends, but intervals along the length of the blade. Compression of the web of Merkel intermediate the ends and in particular by the holder, as discussed by Rosen, appears obvious to both secure the holder to the support element and to enable control of the resiliency of the wiper blade as desired. Note that the rails of Merkel are already shaped as cam ramps intermediate their ends.

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Appellant's argument with respect to the Merkel/Oishei rejection are noted but not persuasive. Appellant argues that since Oishei teaches that a wiper strip together with its rails are introduced into an available supporting bracket frame, it is not possible to use a central claw of a claw bracket for carrying out the compression. Appellant states that the wiper strip would then be no longer insertable from its ends. Such is not understood as the wiper strip would at least be insertable in one direction, just as is achieved by Oishei. Further, such camming action could occur only where needed, thus eliminating any insertion issues. Oishei set forth gripping of the neck portion (40) by the rails due to camming action of the claw of the **holder** (10) on the rails. While Oishei does show such occurring at the end of the wiper blade since this is where the holder of Oishei engages the rail, the holder of Merkel grips the rails intermediate the ends. Thus, adapting the teachings of Oishei to Merkel, where the holder of Merkel is intermediate the ends, would result in compression of the web intermediate the ends. Even though the holder of Merkel does not engage the ends of the rails, it appears it could still be adapted to compress the web thus providing a secure connection of the holder to the rails and the rails to the wiper rubber, as taught by Oishei. It would still be desirable to lock the components (including the holder) of Merkel together as suggested by Oishei to provide a longitudinally stable assembly.

In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

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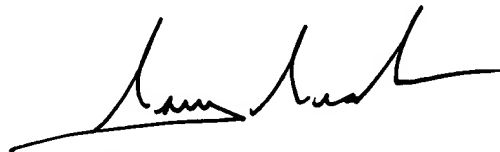
It is noted that Appellant does not separately argue the dependent claims 2-6 and 8-13 with respect to the rejections. Thus, no further comment is made with respect to these claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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Conferees:

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07 June 2007